



Rep. La Shawn K. Ford

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LRB098 10536 KTG 44805 a

1 AMENDMENT TO HOUSE BILL 2330

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2330, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Public Aid Code is amended by  
6 adding Section 10-12.5 as follows:

7 (305 ILCS 5/10-12.5 new)

8 Sec. 10-12.5. Suspension of child support during a period  
9 of incarceration.

10 (a) During any period of time in which the person owing a  
11 duty of support is committed to the custody of the Department  
12 of Corrections or the Department of Juvenile Justice, an  
13 obligation to pay child support is suspended by operation of  
14 law, but not until 60 days after the custodial parent receives  
15 notice and an opportunity to request a termination or  
16 modification of the suspension of the support obligation in

1 accordance with subsection (c) of this Section. If the  
2 custodial parent requests that the suspension or prohibition of  
3 the support obligation be terminated or modified and the court  
4 terminates or modifies the suspension of the support  
5 obligation, or if the parties have otherwise agreed in a  
6 written agreement set forth in a court or administrative order  
7 for support, then the child support obligation shall not be  
8 suspended and if the non-custodial parent wishes to obtain a  
9 modification, he or she must petition for a modification of  
10 support in accordance with Section 510 of the Illinois Marriage  
11 and Dissolution of Marriage Act. The Department may provide, by  
12 rule, for notice to the custodial parent describing the  
13 custodial parent's rights regarding a prospective modification  
14 in accordance with Section 510 of the Illinois Marriage and  
15 Dissolution of Marriage Act.

16 If a non-custodial parent receives a settlement, claim,  
17 inheritance, lottery prize award, or other lump sum or periodic  
18 income of \$500 or more a month or \$5,000 or more as a one-time  
19 lump sum, during a period in which his or her child support  
20 obligation is suspended pursuant to this Code, the  
21 non-custodial parent shall notify the custodial parent, and in  
22 IV-D cases also notify the Department, within 7 days of  
23 receiving or becoming aware that he or she is entitled to  
24 receive this income. If the custodial parent wishes to obtain a  
25 modification based on this income, he or she must petition for  
26 a modification of support in accordance with Section 510 of the

1 Illinois Marriage and Dissolution of Marriage Act.

2 (b) Any period of incarceration of a parent obligated to  
3 pay child support shall not be considered a period of voluntary  
4 unemployment. In the case of an incarcerated parent obligated  
5 to pay child support greater than \$0 whose period of  
6 incarceration is greater than one year and whose period of  
7 incarceration begins on or after July 1, 2014, the Department  
8 shall:

9 (1) temporarily suspend any support obligation of the  
10 parent and the enforcement of any support obligation of the  
11 parent existing prior to the period of incarceration; and

12 (2) temporarily prohibit the accrual of any interest on  
13 any support obligation of the parent existing prior to the  
14 period of incarceration during such period.

15 The temporary suspension of the child support obligation  
16 and of the accrual of interest on any support obligation of the  
17 parent existing prior to the period of incarceration shall end  
18 and both support and accrual of interest on any pre-existing  
19 unpaid obligation shall resume upon the first charging period  
20 to occur after the obligated parent's release from  
21 incarceration. Unless the terms of the support obligation have  
22 been otherwise modified, the support terms shall resume at the  
23 same level as prior to the temporary suspension.

24 (c) Provided the Department is advised or given notice of  
25 the obligated parent's incarceration for a period to exceed one  
26 year beginning after July 1, 2014, the Department, for cases

1 enrolled in the Child Support Enforcement Program established  
2 by Title IV-D of the Social Security Act, or the noncustodial  
3 parent or his or her representative in all other cases, shall  
4 provide both parties with:

5 (1) notice of any suspension or review, adjustment, or  
6 enforcement of a support obligation and of any prohibition  
7 on interest accrual on such obligation that is imposed in  
8 accordance with paragraphs (1) and (2) of subsection (b);  
9 and

10 (2) an opportunity to request that the suspension or  
11 prohibition be terminated or modified on the basis that the  
12 noncustodial parent has sufficient income or resources to  
13 continue payment of the support obligation during the  
14 noncustodial parent's period of incarceration.

15 (d) The Department shall not be liable for failing to act  
16 upon the provisions established under paragraphs (1) and (2) of  
17 subsection (b) if the Department has not been advised of the  
18 obligated parent's incarceration or if the Department has in  
19 place proper procedures for considering an obligated parent's  
20 incarceration when setting and modifying child support  
21 obligations and follows those procedures routinely.

22 Section 10. The Illinois Marriage and Dissolution of  
23 Marriage Act is amended by changing Section 510 as follows:

24 (750 ILCS 5/510) (from Ch. 40, par. 510)

1           Sec. 510. Modification and termination of provisions for  
2 maintenance, support, educational expenses, and property  
3 disposition.

4           (a) Except as otherwise provided in paragraph (f) of  
5 Section 502 and in subsection (b), clause (3) of Section 505.2,  
6 the provisions of any judgment respecting maintenance or  
7 support may be modified only as to installments accruing  
8 subsequent to due notice by the moving party of the filing of  
9 the motion for modification. An order for child support may be  
10 modified as follows:

11           (1) upon a showing of a substantial change in  
12 circumstances, including incarceration prior to July 1,  
13 2014 or for a period of incarceration of less than one  
14 year; and

15           (2) without the necessity of showing a substantial  
16 change in circumstances, as follows:

17           (A) upon a showing of an inconsistency of at least  
18 20%, but no less than \$10 per month, between the amount  
19 of the existing order and the amount of child support  
20 that results from application of the guidelines  
21 specified in Section 505 of this Act unless the  
22 inconsistency is due to the fact that the amount of the  
23 existing order resulted from a deviation from the  
24 guideline amount and there has not been a change in the  
25 circumstances that resulted in that deviation; or

26           (B) upon a showing of a need to provide for the

1 health care needs of the child under the order through  
2 health insurance or other means. In no event shall the  
3 eligibility for or receipt of medical assistance be  
4 considered to meet the need to provide for the child's  
5 health care needs.

6 The provisions of subparagraph (a)(2)(A) shall apply only  
7 in cases in which a party is receiving child support  
8 enforcement services from the Department of Healthcare and  
9 Family Services under Article X of the Illinois Public Aid  
10 Code, and only when at least 36 months have elapsed since the  
11 order for child support was entered or last modified.

12 (a-5) An order for maintenance may be modified or  
13 terminated only upon a showing of a substantial change in  
14 circumstances. In all such proceedings, as well as in  
15 proceedings in which maintenance is being reviewed, the court  
16 shall consider the applicable factors set forth in subsection  
17 (a) of Section 504 and the following factors:

18 (1) any change in the employment status of either party  
19 and whether the change has been made in good faith;

20 (2) the efforts, if any, made by the party receiving  
21 maintenance to become self-supporting, and the  
22 reasonableness of the efforts where they are appropriate;

23 (3) any impairment of the present and future earning  
24 capacity of either party;

25 (4) the tax consequences of the maintenance payments  
26 upon the respective economic circumstances of the parties;

1           (5) the duration of the maintenance payments  
2 previously paid (and remaining to be paid) relative to the  
3 length of the marriage;

4           (6) the property, including retirement benefits,  
5 awarded to each party under the judgment of dissolution of  
6 marriage, judgment of legal separation, or judgment of  
7 declaration of invalidity of marriage and the present  
8 status of the property;

9           (7) the increase or decrease in each party's income  
10 since the prior judgment or order from which a review,  
11 modification, or termination is being sought;

12           (8) the property acquired and currently owned by each  
13 party after the entry of the judgment of dissolution of  
14 marriage, judgment of legal separation, or judgment of  
15 declaration of invalidity of marriage; and

16           (9) any other factor that the court expressly finds to  
17 be just and equitable.

18           (b) The provisions as to property disposition may not be  
19 revoked or modified, unless the court finds the existence of  
20 conditions that justify the reopening of a judgment under the  
21 laws of this State.

22           (c) Unless otherwise agreed by the parties in a written  
23 agreement set forth in the judgment or otherwise approved by  
24 the court, the obligation to pay future maintenance is  
25 terminated upon the death of either party, or the remarriage of  
26 the party receiving maintenance, or if the party receiving

1 maintenance cohabits with another person on a resident,  
2 continuing conjugal basis. Any obligation of a payor party for  
3 premium payments respecting insurance on such party's life  
4 imposed under subsection (f) of Section 504 is also terminated  
5 on the occurrence of any of the foregoing events, unless  
6 otherwise agreed by the parties. Any termination of an  
7 obligation for maintenance as a result of the death of the  
8 payor party, however, shall be inapplicable to any right of the  
9 other party or such other party's designee to receive a death  
10 benefit under such insurance on the payor party's life.

11 (d) Unless otherwise provided in this Act, or as agreed in  
12 writing or expressly provided in the judgment, provisions for  
13 the support of a child are terminated by emancipation of the  
14 child, or if the child has attained the age of 18 and is still  
15 attending high school, provisions for the support of the child  
16 are terminated upon the date that the child graduates from high  
17 school or the date the child attains the age of 19, whichever  
18 is earlier, but not by the death of a parent obligated to  
19 support or educate the child. An existing obligation to pay for  
20 support or educational expenses, or both, is not terminated by  
21 the death of a parent. When a parent obligated to pay support  
22 or educational expenses, or both, dies, the amount of support  
23 or educational expenses, or both, may be enforced, modified,  
24 revoked or commuted to a lump sum payment, as equity may  
25 require, and that determination may be provided for at the time  
26 of the dissolution of the marriage or thereafter.

1       (d-5) During any period of time in which the person owing a  
2 duty of support is committed to the custody of the Department  
3 of Corrections or the Department of Juvenile Justice, an  
4 obligation to pay child support is suspended by operation of  
5 law, but not until 60 days after the custodial parent receives  
6 notice and an opportunity to request a termination or  
7 modification of the suspension of the support obligation in  
8 accordance with subsection (d-7) of this Section. If the  
9 custodial parent requests that the suspension or prohibition of  
10 the support obligation be terminated or modified and the court  
11 terminates or modifies the suspension of the support  
12 obligation, or if the parties have otherwise agreed in a  
13 written agreement set forth in the judgment or otherwise  
14 approved by the court, then the child support obligation shall  
15 not be suspended and if the non-custodial parent wishes to  
16 obtain a modification, he or she must petition for a  
17 modification of support in accordance with this Section. The  
18 Department of Healthcare and Family Services may provide, by  
19 rule, for notice to the custodial parent describing the  
20 custodial parent's rights regarding a prospective modification  
21 in accordance with this Section.

22       If a non-custodial parent receives a settlement, claim,  
23 inheritance, lottery prize award, or other lump sum or periodic  
24 income of \$500 or more a month or \$5,000 or more as a one-time  
25 lump sum, during a period in which his or her child support  
26 obligation is suspended pursuant to Section 10-12.5 of the

1 Illinois Public Aid Code, the non-custodial parent shall notify  
2 the custodial parent, and in IV-D cases also notify the  
3 Department of Healthcare and Family Services, within 7 days of  
4 receiving or becoming aware that he or she is entitled to  
5 receive this income. If the custodial parent wishes to obtain a  
6 modification based on this income, he or she must petition for  
7 a modification of support in accordance with this Section.

8 (d-6) The State shall not consider any period of  
9 incarceration of such parent as a period of voluntary  
10 unemployment that disqualifies the parent from obtaining a  
11 modification of the support obligation consistent with the  
12 parent's ability to pay child support. In the case of an  
13 incarcerated parent the State shall:

14 (1) temporarily suspend any support obligation of the  
15 parent and the enforcement of any support obligation of the  
16 parent existing prior to the period of incarceration; and

17 (2) temporarily prohibit the accrual of any interest on  
18 any support obligation of the parent existing prior to the  
19 period of incarceration during such period.

20 (d-7) The Department of Healthcare and Family Services, for  
21 cases enrolled in the Child Support Enforcement Program  
22 established by Title IV-D of the Social Security Act, or the  
23 noncustodial parent or his or her representative in all other  
24 cases, shall provide a custodial parent with:

25 (1) notice of any suspension or review, adjustment, or  
26 enforcement of a support obligation and notice of any

1 prohibition on the accrual of interest on the support  
2 obligation that is imposed in accordance with paragraphs  
3 (1) and (2) of subsection (d-6); and

4 (2) an opportunity to request that the suspension or  
5 prohibition be terminated or modified on the basis that the  
6 noncustodial parent has sufficient income or resources to  
7 continue payment of the support obligation during the  
8 noncustodial parent's period of incarceration.

9 (e) The right to petition for support or educational  
10 expenses, or both, under Sections 505 and 513 is not  
11 extinguished by the death of a parent. Upon a petition filed  
12 before or after a parent's death, the court may award sums of  
13 money out of the decedent's estate for the child's support or  
14 educational expenses, or both, as equity may require. The time  
15 within which a claim may be filed against the estate of a  
16 decedent under Sections 505 and 513 and subsection (d) and this  
17 subsection shall be governed by the provisions of the Probate  
18 Act of 1975, as a barrable, noncontingent claim.

19 (f) A petition to modify or terminate child support,  
20 custody, or visitation shall not delay any child support  
21 enforcement litigation or supplementary proceeding on behalf  
22 of the obligee, including, but not limited to, a petition for a  
23 rule to show cause, for non-wage garnishment, or for a  
24 restraining order.

25 (g) The Department of Healthcare and Family Services and  
26 the Department of Corrections shall share relevant data and

1 collaborate on the facilitation of identification of  
2 incarcerated parents eligible for either temporary suspension  
3 of a child support obligation or modification of a child  
4 support obligation and shall provide relevant information and  
5 assistance to incarcerated parents eligible for modification  
6 of support.

7 (h) The crime for which the incarcerated parents was  
8 convicted, or the prosecution of the incarcerated parent for  
9 that crime by a legal representative of the Department of  
10 Healthcare and Family Services for cases enrolled in the Child  
11 Support Enforcement Program established by Title IV-D of the  
12 Social Security Act, shall not disqualify the incarcerated  
13 parent from consideration of modification of a child support  
14 obligation, nor shall the action of the Department's legal  
15 representative to bring forth the modification request for  
16 consideration be considered a conflict of interest for the  
17 prosecuting office, except in cases where the crime was  
18 committed to avoid a child support obligation or was committed  
19 against a child of the obligated parent or the other parent.

20 (Source: P.A. 97-608, eff. 1-1-12.)".